IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 160 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

DHANESH R BHOW,

Appearance:

1. INCOME TAX REFERENCE No. 160 of 1993
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for the opinion of this Court in respect of assessment years 1979-80, 1982-83 and 1983-84 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the income of Smt. Rakshaben, the wife of the assessee, who was a partner in the firm of M/s Bidhan Advertising and Marketing Company, Ahmedabad wherein the assessee is also a partner representing his HUF, cannot be added in the income of the assessee u/s. 64(1)(i) of the I.T. Act ?"

2. We have heard Mr Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The assessee in this case is an individual deriving share of profit from various partnership firms, Director fees and interest income. The wife of the assessee Mrs Rakshaben is a partner in the firm styled as M/s Bidhan Advertising and Marketing Company wherein the assessee represents the HUF as a partner in the representative capacity. On the basis of these facts, the Assessing Officer applied the provisions of Section 64(1)(i) of the Income-tax Act, 1961 and proceeded to add the income of Mrs Rakshaben in the hands of the assessee. The Appellate Assistant Commissioner allowed the assessee's appeal and the Tribunal confirmed the said appellate order following the decision of this Court in Dinubhai Ishwarlal Patel vs ITO, 118 ITR 122.

4. The relevant provision of Section 64(1)(i) applicable to the relevant assessment year under consideration in this reference provided that in computing the total income of any individual, there shall be included all such income as arises directly or indirectly to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner. In the facts of the instant case, the assessee was not a partner in the aforesaid firm called M/s Bidhan Advertising and Marketing Company in his capacity as an individual but the assessee was representing the HUF as a partner in the representative capacity and, therefore, the aforesaid provisions of Section 64(1)(i) were not applicable. The view taken by this Court in the case of Dinubhai Ishwarlal (Supra) also came to be approved by the Apex Court in CIT vs. Shri Om Prakash & Ors., (1996) 217 ITR 785.

5. In view of the aforesaid statutory provision and the aforesaid decision of the Apex Court, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

6. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-